

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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of mailing *Page 5*

74-2569

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

Docket No. 74-2569

UNITED STATES ex rel. DEXTER FERGUSON,
Appellant,

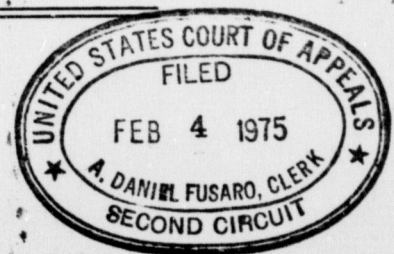
—against—

UNITED STATES OF AMERICA,
Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

GOVERNMENT'S APPENDIX

DAVID G. TRAGER,
*United States Attorney,
Eastern District of New York.*



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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

* AUG 3 1973 *

3 -----X TIME AM
4 UNITED STATES OF AMERICA, :

5 --against-- :

6 ARTHUR FERGUSON, :

7 Defendant. :

8 -----X
9 United States Courthouse
10 900 Ellison Avenue
11 Westbury, New York.
12 April 2, 1973
13 12:30 P.M.

14 B e f o r e :

15 HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

16 I hereby certify that the foregoing is a
17 true and accurate transcript from my sten-
18 ographic notes in this proceeding.

19 *Gerald I. Metz*
20 Official Court Reporter
21 U.S. District Court for the
22 Eastern District of N.Y.

23 GERALD I. METZ
ACTING OFFICIAL COURT REPORTER

APPEARANCES:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: GUY HEINEMANN, ESQ.,
Assistant United States Attorney.

MESSRS. FOTOPOULOS AND ROSENBLATT,
Attorneys for Defendant.

BY: DIMITRIOS FOTOPOULOS, ESQ.,
Of Counsel.
4172 Broadway, New York, N.Y.

.

1
2 THE CLERK: United States against Arthur
3 Ferguson.

4 THE COURT: You are appearing for Arthur
5 Ferguson?

6 MR. FOTOPOULOS: Yes.

7 At this time, your Honor, the defendant
8 wishes to withdraw his plea of not guilty previously
9 interposed, and plead guilty to Counts 5 and 11 of
10 the superseding indictment to cover all of the counts
11 in the indictment.

12 MR. HEINEMANN: In my discussion with your
13 Honor, before the plea to the conspiracy count,
14 Eve Porter is going to plead to the substantive
15 counts.

16 THE COURT: I don't care about that. Are
17 you going to do the same thing with these --

18 MR. HEINEMANN: Could we have a discussion
19 for a moment?

20 (Pause).

21 MR. FOTOPOULOS: At this time, your Honor,
22 the defendant wishes to withdraw his plea of not
23 guilty to the previous plea interposed, and plead
24 guilty to counts one and five of the superseding
25 indictment to cover all of the counts of the indictment.

1
2 BY THE COURT:

3 Q You are Arthur Ferguson, one of the defendants
4 named in this indictment?

5 A Yes, your Honor.

6 Q How old are you, sir?

7 A 48.

8 Q Has there been reason for you to be a patient
9 in any hospital or mental institution in the last five years?

10 A No, your Honor.

11 Q How far have you gone in school?

12 A To the, I guess it will be, fourth term high school.

13 Q You have no difficulty in the American language
14 the English language?

15 A No, I don't, your Honor.

16 Q Mr. Fotopoulos is your retained attorney?

17 A Yes, sir.

18 Q He has just informed the Court that you wish to
19 withdraw your plea of not guilty and to plead guilty to counts
20 one and five of this indictment. Is that your desire?

21 A Yes, your Honor.

22 Q Your wish?

23 A Yes, your Honor.

24 Q With your understanding and acceptance?

25 A Yes, your Honor.

1
2 Q Have you discussed this thoroughly with
3 Mr. Fotopoulos?

4 A I have.

5 Q And he has given you the benefit of his advice
6 with regard to risks of a trial, and chances of victory?

7 A Yes, your Honor.

8 Q After discussing it with him, is it your
9 conclusion that you wish to plead to counts one and five in
10 full satisfaction of this entire indictment, including the
11 indictment that this one supersedes, namely, 72 CR 304?

12 A Yes, your Honor.

13 Q Before considering your plea, I am going to
14 read these counts to you so that there be no misunderstanding.

15 Count five reads as follows:

16 On or about the twenty seventh day of September
17 1971, within the Eastern District of New York, the
18 defendant Arthur Ferguson, that's you, the defendant
19 Winston Green, the defendant Clive Green, the defendant
20 Donald Hewitt, the defendant Winston Josepchs, and the
21 defendant Evangeline Porter, knowingly, intentionally
22 and unlawfully did import approximately 150 pounds
23 of marijuana, a schedule 1 controlled substance, into
24 the United States from Jamaica, West Indies, and the
25 charge is made against you under Title 21, United

A 6

States Code, Section 952 (a), 960 (a) (1) and Title 18, United States Code, Section 2.

Before discussing it, you know Winston Green?

A Yes.

Q You know Clive Green?

A Yes, your Honor.

Q You know Donald Hewitt?

A Yes, your Honor.

Q And you know Winston Josephs?

A I might know him or have seen him, but I can't associate that name.

Q You can't place him?

A I can't place him.

Q Do you know Evangeline Porter?

A Yes.

Q Is it true that the names I mentioned with you, six people, on September 27, 1971, imported approximately 150 pounds of marijuana into the United States from Jamaica in the West Indies?

A Yes, your Honor.

Q The charge here alleges that you knowingly, that's all of you, intentionally and unlawfully -- you know what the word "knowingly" means, you knew what you were doing?

A Yes, your Honor.

A 7

Q And intentionally means for a purpose, with intent to do a certain thing. In other words, you had made up your minds you were going to do something, namely, import marijuana into the United States, that's the intention?

A Yes, your Honor.

Q You knew that it was unlawful to do that?

A Yes, your Honor.

Q Tell me what part you played in this importation?

A Well, I put up the money, not all of the money, some of the monies.

Q In other words, all of you had gotten together that you were going to do this import thing of marijuana, right?

A Yes, your Honor.

Q And that part of this was for you to put up money for the marijuana?

A Yes, your Honor.

Q How did you arrange for that?

A Well, I met Winston Green and Donald Hewitt. I am not sure which sequence it went, but I met both of them, and after, you know how you sometimes have a few drinks and you talk about this and that, it came up that they needed some money. They was in the business, and that if I would give them, say, a thousand dollars, I could get back two thousand, possibly

1
2 fifteen hundred dollars in a couple of days, maybe a week
3 or so, and I needed the money.

4 Q And you needed the money?

5 A I needed it for my club.

6 Q And the business was marijuana importation?

7 A At that particular time, it wasn't said what it would
8 be. They -- I guess they was throwing out hints or warnings
9 to me.

10 Q Did there come a time when it became known to
11 you that it was marijuana?

12 A Yes, your Honor.

13 Q You knew it on the 27th day of September, 1971.
14 That's the date that that count alleges you with the others
15 did import?

16 A Yes, your Honor.

17 Q In other words, you knew about it at that time?

18 A Yes.

19 Q How did Evangeline Porter get involved in that,
20 what was her part?

21 A Well, Evangeline Porter was a friend of ours, mine,
22 my brother's, and her part at this particular time, as it was
23 almost throughout the thing, was that she just happened to
24 be at the airport. I had been --

25 Q What do you mean just happened to be? In other
words, happened to be for a particular reason, to facilitate

1
2 the passing through customs?

3 A Well, it was no guarantee that this could be --

4 Q I didn't say that.

5 A Right. She happened to be on the spot like if --

6 Q If she could help in that regard.

7 A If she could help in that regard, yes.

8 Q That had been discussed?

9 A Yes, your Honor.

10 Q How much money did you put up?

11 A I tell you the truth, it was either \$2,000 or \$2,500.

12 Q \$2,000 or \$2,500 for that one hundred fifty
13 pounds?

14 A Right.

15 Q That 150 pounds did come in?

16 A Yes, somewhat.

17 Q It came in?

18 A Yes.

19 Q Now, count five alleges as follows, that on or
20 about the 21st day of December, 1971, within the Eastern
21 District of New York -- that's some three months later,
22 right?

23 A Yes.

24 Q --the defendant Arthur Ferguson and that's you,
25 the Defendant, Dexter Ferguson, that's your brother, right?

1
2 A Yes.

A 10

3 Q The defendant Winston Green, the defendant
4 Clive Green, the defendant Michael Anthony Anderson, the
5 defendant Jessie Mae Parrish, and the defendant Evangeline
6 Porter, knowingly, intentionally and unlawfully did import
7 approximately 88 pounds of marijuana, a schedule one controlled
8 substance, into the United States from Jamaica, West Indies,
9 and that charge is made against you under Title 21 of the
10 United States Code, Section 952 (a) and Section 960 (a) (1)
11 and Title 18 of the United States Code, Section 2.

12 Now, before we talk about that, in this count, as in
13 the first count, you are being charged, too, under Title 18
14 of the United States Code, Section 2. You know what that is?
15 That's the aider and abettor clause.

16 A Yes,

17 Q You know that anyone who aids and abets, in the
18 commission of a crime, is guilty as the principal?

19 A Yes, your Honor.

20 Q And the other sections that I quoted has to do
21 with violations of the narcotics laws?

22 A Yes, your Honor.

23 Q In this count five, there are additional names,
24 for instance, Michael Anthony Anderson. You knew him?

25 A Not that name. I met him when I was in Jamaica.

A. 11

1

2

Q You met him in Jamaica?

3

A Yes, your Honor.

4

Q That's where some more conversations went on
5 about marijuana?

6

A No.

7

Q Not there?

8

A No.

9

Q Well, that has nothing to do with this count?

10

A Yes.

11

Q You met him in Jamaica?

12

A Yes.

13

Q So you knew him?

14

A Yes.

15

Q You knew him at this time in December of 1971?

16

A If that was in Jamaica, yes.

17

I only seen him one time.

18

Q You know Jesse Mae Parrish?

19

A I met her when I met him.

20

Q You know the defendant Evangeline Porter, of
21 course?

22

A Yes, your Honor.

23

Q Now, this count says that on December 21, 1971,
24 those mentioned, namely, you and your brother Dexter, Winston
25 Green, Clive Green, Michael Anthony Anderson, Jesse Mae Parrish

1 and Evangeline Porter, that's seven, knowingly again,
2 intentionally again, and unlawfully again, did import
3 approximately 88 pounds of marijuana. The last one was
4 in September, and it was 150 pounds, right. Now, is that so?
5 Tell me what your part in this was.

6 A May I speak to my counsel?

7 Q You may.

8 (Pause)

9 Would you answer please, your part in this, keeping in
10 mind what Section 2 is. I told you what Section 2 is, and
11 you have discussed this with your lawyer. You could be
12 talking to any one of them and they are all involved, you are
13 all responsible equally.

14 A I understand this now. My part was that I happened to
15 be in Jamaica, and I got a call that Anderson and the young
16 lady --

17 Q Anderson and Parrish?

18 A Anderson and Parrish were at a hotel and they had no
19 money.

20 Q Where?

21 A In West Indies.

22 Q West Indies?

23 A Right.

24 And that would I kindly go over there and pay their bill
25

A 13

1
2 and see that they had a place to stay.

3 Q Who called you?

4 A Clive Green.

5 Q He is one of those named in this count?

6 A Yes, sir.

7 Q Did he tell you anything other than that, just
8 picked up the phone and said, two of my friends are over
9 there?

10 A The reason why he couldn't go himself, he was working
11 for his father and I think he had been taking off a lot of
12 time, so he couldn't get away, so he asked me to do him a
13 favor.

14 Q Just a favor.

15 A Yes, sir. So I went and picked them up and paid their
16 bill. I think it was maybe thirty or forty dollars, and I
17 put them in the guest house. After that, we had a conversation
18 and I do know that they were down there to bring some stuff
19 back.

20 Q When you say after that, we had a conversation,
21 that means with Anderson and Parrish?

22 A Just Anderson.

23 Q You know that it had to do with taking into the
24 United States marijuana?

25 A One way, more or less, yes.

A 14

Q What do you mean "one way, more or less"?

A I didn't go into the details of what he was doing, but it was mentioned that he was down there to take some stuff back.

Q And you knew nothing about it?

A Only after I was down there, yes.

Q But that call that you got from Clive Green, was just innocent like that, and you went down there, took these people out of their hotel room, put them in a guest house, and then you struck up a conversation about importing.

Tell me more about it.

A I received this call.

Q I have got to be satisfied that you are guilty.

A I received this call, and at this point --

Q There was more to that call than just go down and help them?

A No. I was in Jamaica myself already.

Q I know.

Before you got the call from Clive Green that his two friends whom you didn't know at that time, Anderson and Parrish -- you didn't know them?

A I had never seen them, no.

Q At his phone call, you were going to go and take them out of their problems and pay their hotel bill and put

1 them up?

A 15

2 A Yes, because he said they would give me the money later
3 on.

4 Q Did he tell you to talk to them about anything?

5 A No, sir.

6 Q How did this conversation strike up then about
7 marijuana?

8 A Well, evidently --

9 Q And how do you get involved with them to import?
10 From there it was exporting, and here it was importing because
11 it had to leave Jamaica, right?

12 A Right.

13 Q Where you were at , that marijuana, this so-
14 called 88 pounds had to leave?

15 A Yes.

16 Q That's what Anderson and Parrish had?

17 A I imagine that, yes. But what happened is that I went
18 down there and paid the bill and he told me he was going to
19 reimburse me for the money.

20 Q Who told you that?

21 A Clive Green and I agreed to it. So I went down and
22 picked them up and saw that they were settled.

23 In the conversation that ensued later, we were sitting
24 out on the porch. He was a Jamaican. He said how nice it was
25

A 16

to be home for a while, and he was down here to take care of some business, and I guess he assumed that I knew more about this particular thing at that time, but I didn't. But after we started rapping, then I was aware of what was happening.

Q And you continued to be part of it?

A Well, yes, your Honor.

Q Tell me what you did after that.

A Besides paying their bill at that particular time, sir?

Q Yes.

A I knew what he was doing. But after that, besides knowing, I didn't do anything with this particular thing there. In other words, I didn't help pack them, I didn't see that he was off. I went to the airport and I know that he was going on a certain day.

Q You are telling me that you are pleading guilty to this certain count. What are you pleading guilty to?

A Because I knew what he was doing.

Q You were part of it, weren't you?

A Yes, your Honor.

Q This wasn't the only time, according to these, there are some how many counts in this indictment?

MR. HEINEMANN: There are eleven counts, your Honor. I think there are approximately four or five separate shipments.

1 THE COURT: I know that.

2 Q This business had been going on a number of
3 other times, in accordance with this indictment. I know you
4 are only pleading guilty to two counts in full satisfaction
5 of the entire indictment. But you are involved in this
6 business with these others, aren't you?
7

8 A Some of them, your Honor.

9 Q This was just another occasion, wasn't it?

10 A Yes, your Honor.

11 Q You were down there and you helped in the making
12 up of this scheme to get this stuff out of Jamaica and into
13 the United States?

14 A Yes, your Honor.

15 Q Am I putting words in your mouth, or are you
16 telling me, "Yes, your Honor" because it's true?

17 A Most of it is true.

18 Q Tell me what part of it isn't true. I want to
19 know.

20 A You know, the part that you are saying -- or in the
21 indictment, it states that I knew beforehand, before they even
22 came down there, that that was the plan to do this. I didn't
23 know anything about it. But after they got down there, I
24 did know.

25 Q This count, count five, says on December 21.

1
2 A Yes.

A 18

3 Q Is there anything wrong with that date?

4 A If that's the date they was in Jamaica, no, your Honor
5 that they came back in there.

6 Q Listen now. It says on December 21, 1971, the
7 seven names that I mentioned, knowingly, intentionally and
8 unlawfully did import into the United States, 88 pounds,
9 approximately 88 pounds of marijuana. On that day, it was
10 imported into the United States, was it?

11 A Yes, your Honor.

12 Q What part did you play in bringing it into the
13 United States?

14 A I knew that they was bringing it in.

15 Q Did you help them go to the airport down there
16 to come in?

17 A I was in Jamaica.

18 Q You were in the West Indies? Did you help them?

19 A I went. But I saw that they had left and I went down
20 to the airport and told them goodbye, yes.

21 Q Did you see anything with them?

22 A No. There was no bags or anything there. I met them
23 in the bar there.

24 MR. HEINEMANN: The Government's proof, so the
25 factual basis is clear, would be that witnesses will

A 19

1 testify that defendant Arthur Ferguson met them
2 at the airport, Kingston, Jamaica, gave them the
3 suitcases that they eventually took back to this
4 country which were seized.

5
6 THE COURT: He says he met them at the
7 airport and said goodbye to them. If he just
8 said goodbye to them, I don't know what he's
9 pleading guilty to count five for.

10 Q Did you give them anything?

11 A Yes. I knew they had the suitcases, yes.

12 MR. HEINEMANN: The proof would show --

13 Q Did you give them the suitcases, did you take
14 it in your car and bring it to them?

15 A At the airport?

16 Q Yes.

17 A No, your Honor.

18 Q Who gave them the suitcases?

19 A Well, the suitcases went from the house. See, when
20 they left there for the airport I wasn't home at that
21 particular time, and they left the house and went to the
22 airport and I met them at the airport.

23 Q With the suitcases?

24 A Yes.

25 Q You met them with the suitcases, you had the

A 20

1
2 suitcases with you?

3 A No. They had the suitcases. I went to the airport
4 by myself.

5 Q Where were the suitcases before you met them
6 at the airport, at your home?

7 A Yes.

8 Q They were in your possession at your home?

9 A Yes.

10 Q You knew what was in those suitcases?

11 A Yes.

12 Q You understand that you have the right to go to
13 a trial here, don't you?

14 A Yes.

15 Q You don't have to plead guilty, you know that?

16 A I know that, your Honor.

17 Q You understand, too, that if you should go to
18 trial, you would be entitled to a public trial and speedy
19 trial before an impartial jury?

20 A Yes, your Honor.

21 Q And that you would be entitled to compulsory
22 process to bring in witnesses in your own behalf?

23 A Yes, your Honor.

24 Q And that you would have the right to be confronted
25 by witnesses against you?

A 21

1
2 A Yes, your Honor.

3 Q Do you know, too, that in such a trial, you
4 could sit back and say nothing, produce no witnesses, produce
5 no evidence, sit mute because it's the Government's burden
6 and you could just stand back on that, it's the Government's
7 burden to prove you guilty beyond a reasonable doubt.

8 A Yes, your Honor.

9 Q Do you understand, too, that if you should plead
10 guilty to count one of this indictment, the Court has the
11 power to and may sentence you to a term of imprisonment of
12 up to five years and fine you in a sum of up to fifteen
13 thousand or both?

14 A Yes, your Honor.

15 Q And that if you plead guilty to count five, the
16 Court has the power to impose a term of imprisonment of up
17 to five years and a fine of up to fifteen thousand or both?

18 A Yes, your Honor.

19 Q Do you know, too, that the Court has the power
20 to run those sentences consecutively?

21 A Yes, your Honor.

22 Q Which means that I could impose the same sentence
23 on both counts, and run them consecutively, so if I gave you
24 five years on one and five years on the other one, you could
25 get ten years?

1 A Yes, your Honor.

A 22

2 Q You understand that?

3 A Yes.

4 Q The Court also has the power to run them con-
5 currently, but I just want you to know that in this case, the
6 Court has the power to run them consecutively, both the fines
7 and the terms of imprisonment?

8 A I understand that, your Honor.

9 THE COURT: Is there a period of special
10 parole here?

11 MR. HEINEMANN: I believe there is a two
12 year special minimum parole.

13 Q Do you know that each of those two counts, in
14 addition to what the Court said it could impose, the Court
15 must impose, if I should sentence you to a term of imprisonment,
16 either consecutively or both, the Court must sentence you also
17 to a term of special parole of not less than two years and
18 that applies to both counts one and five, in addition to the
19 sentence of imprisonment, plus the fine.

20 A Then it would be four years parole.

21 Q Four years of parole on both.

22 A Yes.

23 Q It could be four years. I could run the two
24 sentences concurrently where it would be two years, but it coul
25

1 be consecutive, four years special parole, likely imprisonment,
2 consecutive, five and five or whatever it is, do you understand
3 that?
4

5 A I understand that.

6 Q Now, after hearing your rights, do you still
7 desire to plead guilty?

8 A Yes, your Honor.

9 Q Is there anything that we talked about thus far
10 that there is a question in your mind about that you want to
11 talk about?

12 A No, your Honor.

13 Q You are sure that you want to plead guilty
14 to these two counts?

15 A Yes, your Honor.

16 Q Has anyone made any promises of any kind or
17 threats of any kind, to induce you to plead guilty to these
18 two counts?

19 A No, your Honor.

20 Q You have done so voluntarily?

21 A Yes.

22 Q Are you pleading guilty to counts one and five
23 because you in fact, did commit each and every act that
24 counts one and five allege you committed?

25 A Yes, your Honor.

A 24

Q We have talked about the two counts?

A Right.

Q There is no misunderstanding between you and me as to what you are doing and what the counts allege you did?

A Yes.

Q You made these admissions to me with regard to both counts one and five?

A Yes, your Honor, I did.

Q And you stand on those admissions?

A Yes.

THE COURT: Counsellor, Mr. Fotopoulos, is there any reason why the Court should not accept the plea in this case?

MR. FOTOPOULOS: No reason that I can think of.

THE COURT: Mr. Heinemann?

MR. HEINEMANN: No reason.

THE COURT: Mr. Fotopoulos, you have discussed this with Mr. Ferguson?

MR. FOTOPOULOS: Yes, I have, your Honor.

THE COURT: Is it your advice that he accept this plea?

MR. FOTOPOULOS: Yes, it is, your Honor.

THE COURT: All right, on the basis of the

A 25

colloquy between this Court and this defendant, with regard to his plea as to counts one and five, and upon his admissions that he made to the Court, with regard to each of the said counts, and upon the representation by counsel and by the government, the Court is of the opinion that there is a reasonable basis in fact for accepting the plea of guilty to counts one and five of the indictment, contained in 73 CR 118 and on such findings, accepts the plea of guilty to counts one and five of this indictment in full satisfaction of the balance of that indictment, plus the indictment contained in file No. 72 CR 304.

MR. FOTOPOULOS: Yes, your Honor.

MR. HEINEMANN: I have no objection to continuing the defendant's bail status. He's on a surety bond.

THE COURT: Sentence is adjourned without date, pending receipt by me of a pre-sentence report. You see this gentleman over here, Mr. Morris, right after you get through and he will notify you when to come before me for sentence.

(Hearing closed.)

.

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
3 -----x

4 UNITED STATES OF AMERICA, :
5 -against- :
6 DEXTER FERGUSON, :
7 Defendant. :
8 -----x

73 CR 118

9
10 United States Courthouse
11 900 Ellison Avenue
12 Westbury, New York.
13 April 2, 1973
14 12:45 P.M.

15 B e f o r e :

16 HONORABLE ANTHONY J. TRAVIA, U.S.D.J.

17 I hereby certify that the foregoing is a
18 true and accurate transcript of the
19 stenographic notes in this case.

20 Official Court Reporter
21 U.S. District Court for the
22 Eastern District of N.Y.

23 GERALD I. METZ
ACTING OFFICIAL COURT REPORTER

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.
★ AUG 3 1973 ★
TIME A.M. _____
P.M. _____

A 27

APPEARANCES:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York.

BY: GUY HEINEMANN, ESQ.,
Of Counsel.

PAUL K. ROONEY, ESQ.,
Attorney for Defendant.

.

THE CLERK: United States of America against
Dexter Ferguson.

MR. ROONEY: This defendant, Dexter Ferguson,
wishes to withdraw his plea of not guilty entered
to the two indictments in question and wishes to
plead guilty to counts eight and ten of indictment
73CR118.

I have gone over these counts in the
indictment with him on several occasions, and I am
satisfied that there is no reason why this plea,
if it's acceptable to your Honor, should not be
entered.

BY THE COURT:

Q Mr. Ferguson, you are Dexter Ferguson, one of
the defendants named in this superseding indictment contained
in File No. 73 CR 118?

A Right, your Honor.

Q How old are you Mr. Ferguson?

A 44.

Q How far did you go in school?

A High school graduate.

Q Have you for any reason been in any mental
institution or any other kind of hospital during the last
five years?

A 29

1
2 A No, your Honor.

3 Q Do you use drugs yourself?

4 A No, your Honor.

5 Q Therefore, there is no difficulty in under-
6 standing what's going on here?

7 A No, your Honor.

8 Q You know what it's all about?

9 A Yes.

10 Q You understand me, there is no language
11 difficulty?

12 A I do. No problem.

13 Q Your attorney, Mr. Rooney, has just advised the
14 Court that you wish to withdraw your plea of not guilty to
15 this superseding indictment and to plead guilty to counts
16 eight and ten of the said indictment in full satisfaction of
17 this indictment and the superseded indictment contained in
18 file No. 72 CR 304.

19 Before considering your plea, I am going to read
20 these counts, so that there be no question as to what they
21 say, so I can talk to you about them.

22 Now, count eight reads as follows:.

23 On or about the ninth day of February, 1972,
24 within the Eastern District of New York, the defendant
25 Dexter Ferguson, that's you, and the defendant Winston

A 30

Green, together with one Clinton Lloyd Morrison, knowingly, intentionally and unlawfully did distribute approximately five pounds of marijuana, a schedule one controlled substance, and the charge is made against you under Title 21 of the United States Code, Section 841 (a) (1) and Title 18, United States Code, Section 2.

Now, let's go to that one first. You know that Title 21, Section 841, and the other Sections that follow have to do with the narcotics laws?

A I know it now, yes, your Honor.

Q You have discussed this with your lawyer?

A Right, your Honor.

Q You know, too, that Title 18, Section 2, has to do with the aider and abettor section of the law, which says that anyone of a number, if they participate in any one, each one of them is guilty as the other, and he can be punished as a principal, do you know that?

A Right, your Honor.

Q Now, this count eight talks about something that occurred on February 9, of 1972, right?

A Right, your Honor.

Q Is that a correct date?

A Yes.

1 Q Approximately the right date?

2 A Approximately, yes, your Honor.

3 Q It says that you and Winston Green, whom you
4 know --

5 A Yes, your Honor.

6 Q And Clinton Lloyd Morrison, whom you know --

7 A Yes, your Honor.

8 Q The three of you knowingly and intentionally
9 and unlawfully -- you know what these three words mean,
10 knowingly, you do something knowing what you are doing,
11 with no mistake or anything of that kind or nature, you knew
12 what you were doing?

13 A Yes.

14 Q And that you did intentionally -- which means
15 that you intended to do something in furtherance of this
16 illegal act which you had in mind, right?

17 A Right, your Honor.

18 Q Unlawfully means it was an unlawful thing to
19 do, it was against the law to fool around with marijuana,
20 especially importing or exporting, anything to do with
21 marijuana is unlawful?

22 A Yes, your Honor.

23 Q It says that the three of you, knowingly,
24 intentionally and unlawfully did distribute -- that means you
25

1
2 got rid of, you sold it?

3 A Right, your Honor.

4 Q --five pounds of marijuana.

5 A Yes, your Honor.

6 Q The three of you got together and sold it.
7 How did you do it?

8 A It was a phone call. I got a phone call, call from
9 Lloyd.

10 Q Lloyd is Clinton Lloyd Morrison?

11 A Yes.

12 He wanted five pounds of marijuana. I sold it to him.

13 Q You brought it to him?

14 A Right.

15 Q You had it in your possession?

16 A I did, your Honor.

17 Q How did Winston Green get involved in this?

18 A Well, actually Winston knew Lloyd. Winston knew Lloyd
19 you know, but --

20 Q He introduced you to Lloyd?

21 A No. I met Lloyd at the Keg Lounge. This is where this
22 was sold, at the Keg Lounge.

23 Q That's where you sold this at?

24 A Yes.

25 Q In other words, he called you and you had the

A 33

1
2 five pounds available that you could give him?

3 A Right, your Honor.

4 Q You got paid for it?

5 A Yes, your Honor.

6 Q You knew you were doing something illegal, then,
7 right?

8 A Yes, your Honor.

9 Q Count ten alleges as follows, that on or about
10 the eleventh day of February 1972, within the Eastern District
11 of New York, the defendant, Dexter Ferguson, that's you, and
12 the defendant Winston Green, together with one Clinton Lloyd
13 Morrison, knowingly, intentionally, and unlawfully did
14 distribute approximately five pounds of marijuana, a schedule
15 one controlled substance, and that charge is made against you
16 under Title 21 of the United States Code, Section 841 (a) (1)
17 and Title 18 of the United States Code, Section 2. Those
18 sections again, are the same sections that I talked to you
19 about a minute ago with respect to count eight?

20 A Right, your Honor.

21 Q Here it talks about something that occurred on
22 February 11, 1972, right?

23 A Right, your Honor.

24 Q Here again it says that the three of you, you,
25 Winston Green and Clinton Lloyd Morrison, knowingly, intentionally

1
2 and unlawfully distributed, the three of you did distribute
3 five pounds of marijuana. You tell me.

4 A I didn't distribute -- well, yes I did; I sold it
5 to him again.

6 Q That's distributing it, isn't it?

7 A Yes, I sold it to him.

8 Q Now, the three of you were involved in this?

9 A On this occasion here, Winston could have been with
10 Lloyd, because he -- he could have been with him, but I
11 don't -- I know Lloyd and myself. I know how Winston got
12 into it.

13 Q But you did deliver to --

14 A No. Lloyd came to me and I gave it to him.

15 Q In other words, Lloyd came to you and you gave
16 it to him?

17 A Right.

18 Q What was he going to do with it?

19 A I guess distribute it.

20 Q Distribute it again?

21 A Right.

22 Q Mr. Dexter Ferguson, you are aware, are you not,
23 that you are entitled to a speedy and public trial by an
24 impartial jury?

25 A Yes, your Honor.

A 35

Q You are aware, too, that if you should go to trial, that you would be entitled to compulsory process to obtain witnesses in your own behalf?

A Yes, your Honor.

Q And that you would be entitled to be confronted by witnesses against you?

A Yes.

Q Also, that in such a trial, you could sit back and be mute, offer no evidence, offer no witnesses, say absolutely nothing and leave it to the Government whose burden it is to prove you guilty beyond a reasonable doubt?

A Yes, your Honor.

Q You know, too, that if you plead guilty to these two counts, namely, eight and ten, the Court has the power to, and may sentence you to a term of imprisonment of up to five years, and a fine of up to \$15,000 or both on count eight and that the Court has the power and may impose a fine of up to \$15,000 and a term of imprisonment of up to five years or both on count ten?

A Yes.

Q And the Court has the power to run both sentences consecutively, in other words, if the Court wishes to, it can sentence you on both and double the ante?

A Yes.

A 36

Q In other words, run them consecutively.

A Yes.

Q Or if it wishes, in its full discretion, it can run them concurrently, too, but I just want you to know the range that you stand to be punished for, which is five years and fifteen thousand on each and it could be on each to run consecutively. You are aware of that?

A Yes, your Honor.

Q Knowing your rights, do you still desire to plead guilty?

A Yes, your Honor.

Q Have there been any promises or any threats made of any kind, to induce you to plead guilty?

A No, your Honor.

Q Has any promise been made to you about what the sentence may be?

A No, your Honor.

Q There certainly has been no promise by me, has there been?

A No, your Honor.

Q Are you making this plea voluntarily?

A I am, your Honor.

Q You have discussed this with Mr. Rooney?

A Oh, yes, your Honor.

Q And he's advised you of the risks of a trial?

A 37

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2 A Yes, your Honor.

3 Q After discussing it with him, I am sure he
4 advised you with regard to your rights, and it's your desire
5 to plead guilty as you have indicated to counts eight and
6 ten?

7 A Yes, your Honor.

8 Q Are you making this plea of guilty to these
9 two counts, because you in fact did commit each and every
10 act that each of these counts alleges you committed?

11 A Yes, your Honor.

12 THE COURT: Mr. Rooney, is there any reason
13 why this Court should not accept this plea?

14 MR. ROONEY: No, your Honor.

15 THE COURT: Mr. Heinemann?

16 MR. HEINEMANN: No reason.

17 THE COURT: All right, on the basis of the
18 colloquy between this Court and this defendant,
19 and the admissions this defendant has made with
20 regard to his participation in these two counts,
21 eight and ten, and upon the representations of
22 counsel, the Court is of the opinion that there
23 is a reasonable basis in fact, for accepting the
24 plea of guilty of this defendant as to counts eight
25 and ten, and so finds, and on such findings, accepts

1
2 the plea of guilty to counts eight and ten of the
3 indictment contained in File No. 73 CR 118 in full
4 satisfaction of that indictment, plus the superseded
5 indictment contained in File No. 72 CR 304.

6 Now, on the question of sentence, it will be
7 adjourned pending the receipt of a probation report.
8 Bail continued?

9 MR. HEINEMANN: I have no objection to
10 continuing the defendant's bail.

11 THE COURT: Bail continued.

12 Will you see Mr. Morris before you leave?

13 (Hearing closed.)

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1
2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK
4

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ AUG 13 1973 ★

5 UNITED STATES OF AMERICA :

6 -against- :

73 CR 118

7 DEXTER FERGUSON, :

8 Defendant. :
9

x TIME A.M.
P.M.

10 United States Courthouse
11 Brooklyn, New York
12 June 15, 1973
13 11:00 a.m.
14

15 B e f o r e :

16 HONORABLE ANTHONY J. TRAVIA, U.S.D.J.
17
18
19
20
21
22
23

24 HENRY R. SHAPIRO

25 OFFICIAL COURT REPORTER

APPEARANCES:

ROBERT A. MORSE, ESQ.,
United States Attorney for the
Eastern District of New York

BY: GUY HEINEMANN, ESQ.,
Of Counsel.

PAUL K. ROONEY, ESQ.,
Attorney for Defendant.

* * * * *

THE CLERK: Dexter Ferguson for
sentencing.

MR. ROONEY: Ready for sentencing,
your Honor.

THE COURT: Mr. Rooney, standing to your
right, is your retained attorney?

MR. ROONEY: Paul K. Rooney.

THE DEFENDANT: Yes.

THE COURT: Earlier today -- it was this
morning -- I sent out to you my copy of the pre-
sentence report, with reference to your client.

Have you had a chance to read it and
discuss it?

MR. ROONEY: Yes.

THE COURT: That, too, had attached to
it a number of letters. I may tell you that a
couple of the letters impressed me very much,
particularly the letters from the Police
Department, of which he was a part, and of the
public defender's service, of which he was a
part, after he had been physically disabled
and let out. I might tell you what impressed
me even more here. I have a fellow that should
know better, because these letters that I have

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received to indicate that while he was with the Department -- I think it was the Metropolitan Area Police of Washington and the Public Defender Service of the District of Columbia-- they speak very highly of him. While he was a member of those two offices, they say nothing of him since leaving there, and when I say I was impressed by that, I assume when he was there, he was a darn good cop, and after he got hurt, he was out on disability pension, and he went with the Public Defender's Service, where he did a good job. What happened? He forgot about it? These letters are all attached to this report, and you have looked it all over?

MR. ROONEY: Yes, your Honor.

THE COURT: Is there anything in this report that you feel ought to be brought to my attention, that is inconsistent with the facts as you know them?

MR. ROONEY: There is, but I have a question?

But with respect to the preparation, I would like to know if the parole officer

1 interviewed the Federal agents directly in this
2 case?
3

4 THE COURT: I have no idea. All I know,
5 that I have a report submitted to me and pre-
6 pared by our Probation Department and signed
7 by the investigator who prepared the report
8 and in the beginning, it said that the defend-
9 ant pleaded guilty, et cetera, and the customs
10 agents report reflects -- that tells you where
11 the information was obtained.

12 MR. ROONEY: I will assume that they did.

13 THE COURT: It talks about agents having
14 given information. If you want to pick out any
15 part, I wish you would.

16 MR. ROONEY: I would want to discuss
17 the report. There are portions that we do
18 contest.

19 I would like to point out if the
20 Probation Department did interview agents
21 directly, I consider it highly irregular.

22 THE COURT: In what way? Don't you think
23 the Probation Department should obtain --

24 MR. ROONEY: They should go through
25 the United States Attorney.

1
2 THE COURT: I am sure they got information
3 from the United States Attorney.

4 PROBATION OFFICER: In every instance, we
5 do both. We contact the Assistant United States
6 Attorney and the agent who handled the case.

7 THE COURT: I take it you do that to be
8 thorough, so the information you give me is not
9 in any way obtained through thin air?

10 MR. ROONEY: That explains some of the
11 misstatements, I take it, that came from the
12 agents. They are somewhat misleading.

13 Your Honor has the wrong conception of
14 this case. There is no major ring. This thing
15 has been blown so much out of proportion. This
16 is the original gang that could not shoot
17 straight. They bring in a bag or two and leave
18 it at the airport, they talk about a failure
19 to cooperate when the man has been debriefed
20 by them. This is the danger of speaking to
21 agents and not to the assistant, to obtain
22 the facts.

23 THE COURT: I thought he did.

24 MR. ROONEY: He apparently spoke to the
25 agent about it.

1
2 THE COURT: Is this your report?

3 PROBATION OFFICER It is Mr. Connelly's.

4 THE COURT: You point out what you want.

5 MR. ROONEY: Page 8, the agent describes
6 Arthur and Dexter Ferguson -- Federal agents,
7 I take it.

8 THE COURT: Certainly, the name of the
9 agent wouldn't affect me. I am only interested
10 in what information they have.

11 MR. ROONEY: With no facts, really,
12 they describe Dexter Ferguson as the organizer--
13 as the organizer of this large smuggling
14 operation.

15 THE COURT: They say it was him, his
16 brother, and porter and then, of course, they
17 say that he was an enforcer.

18 MR. ROONEY: I will get to that. There
19 is no description of the extent of the
20 operation, the amount that was brought in,
21 although there were a lot of names attached.
22 The fact of the matter is, there was very
23 little marijuana that was brought into this
24 country. For some reason, they went out to
25 get wiretaps, which I think was a waste of time.

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2
3 There is no great description to show
4 that this was a smuggling operation of enormous
5 magnitude, as compared to the gang that
6 couldn't shoot straight. They say Dexter acted
7 as the enforcer who kept the couriers in line.
8 There are no facts that should be set forth.
9 We can test that vigorously. We maintain it is
10 untrue and didn't happen. They also say --

11 THE COURT: You knew, Mr. Rooney, when
12 your client offered to plead before me, that
13 he was one of some 12 or 13 --

14 MR. HEINEMANN: Thirteen.

15 THE COURT: -- 12 or 13 defendants, all
16 of whom were being charged with a conspiracy.

17 MR. ROONEY: I knew that there were other
18 people involved.

19 THE COURT: He knew what the indictment
20 was.

21 MR. ROONEY: Yes, oh, yes.

22 THE COURT: And what it was, in its
23 totality.

24 MR. ROONEY: Yes.

25 THE COURT: It was after consultation
with you that he decided to plead guilty to

1
2 counts eight and ten.

3 MR. ROONEY: Yes.

4 THE COURT: You have the entire picture
5 at that time.

6 MR. ROONEY: That's right.

7 THE COURT: If that is so, what you are
8 saying now, why didn't you refuse to take the
9 plea?

10 MR. ROONEY: What I am saying here is
11 contained in the second paragraph, on page 8,
12 is just untrue that he kept the couriers in
13 line and refused to cooperate, and that he gave
14 misleading information. This is highly pre-
15 judicial. There are no facts set forth that
16 would buttress those contentions. The fact
17 is that there were 13 people involved. He
18 didn't know all of them. He didn't plead to
19 a conspiracy.

20 THE COURT: He knows Porter and Arthur
21 Ferguson.

22 MR. ROONEY: He certainly does.

23 THE COURT: Now about the individuals
24 in the individual count?

25 MR. ROONEY: Counts eight and ten?

1
2 THE COURT: Who were involved in them?

3 MR. ROONEY: I will have to go back to
4 the indictment, Judge.

5 THE COURT: Winston Green, Lloyd Morrison,
6 that is count eight. Those are two others.

7 MR. ROONEY: Yes, your Honor.

8 THE COURT: Then count ten, we have
9 Winston Green and Lloyd Morrison, again --
10 Clifton Lloyd Morrison.

11 MR. ROONEY: He knows those people. He
12 didn't know all the other people.

13 THE COURT: You are picking on the fact
14 that I said that there were 13 people involved.
15 In those two, there were at least four. He knew
16 Porter and he knows his brother. That's four.
17 I do not know if there were any other counts
18 in which he was named. There was an under-
19 standing at the time of the pleas that they
20 would be dismissed, and I will see to it that
21 they are.

22 You go through those counts he is
23 involved in. Five is the first one --

24 MR. ROONEY: Yes, your Honor.

25 THE COURT: That's not one that he pleaded

1
2 guilty to. I do not know whether they'd be
3 able to prove it or not. That is something that
4 I will let the government speak for itself on.

5 When I read the case, I could not ignore
6 that which comes to my attention by way of
7 the probation report, and I certainly am not
8 going to punish him for the counts that he did
9 not take a plea to by saying, "You are on
10 count 5, too, and you should get an extra rap
11 for count five."

12 In answer to you, where you say I
13 mentioned 13 names, well, look at count five
14 and read them:

15 Arthur Ferguson, Dexter Ferguson, Winston
16 Green, Clifton Green, Anderson, Parish and
17 Porter.

18 MR. ROONEY: He does not know the Parish
19 person.

20 THE COURT: I do not know whether he
21 knows him or not. As far as I am concerned,
22 these are other counts -- they are other
23 counts where he is named. What do you want me
24 to do? I can't ignore the picture that is
25 being portrayed to me. If any picture that is

portrayed to me by the report, which you feel has influenced me in making a determination on this case, then you point it out to me.

MR. ROONEY: That's what I'm afraid of.

THE COURT: If that is so, I will disregard that part. I will be glad to disregard any part of the report.

MR. ROONEY: I would be happy if you disregarded paragraph 2 on page 8.

THE COURT: You have my report.

MR. ROONEY: Why don't I hand it back to you?

THE COURT: Is that the only one?

MR. ROONEY: There is reference to a strong-arm man --

Too, on page 8, the last full paragraph.

What I dispute there, that there was this enormous drug ring or marijuana ring that he was an enforcer and refused to cooperate.

THE COURT: Did he cooperate?

MR. ROONEY: He did.

Apparently, he didn't say what they wanted him to say.

THE COURT: That part is all right. I'm sure that doesn't make any impression on me whether he did or didn't.

MR. ROONEY: I think something must make an impression on you, is the fact that they say he is an enforcer.

THE COURT: You want me to disregard from my mind that the agents described Arthur Ferguson and Dexter Ferguson as organizers of that large marijuana smuggling operation?

MR. ROONEY: My opinion of that is my own. What I would like you to forget, if you will, is the fact that they described him as being part of a ring that is much larger than it actually is.

I contest that he was an enforcer.

THE COURT: Frankly, that doesn't mean anything to me, because I do not know to what extent.

MR. ROONEY: They say on page 12 that he was a strong-arm man.

THE COURT: I don't put the two together.

(continued on following page)

THE COURT: There is no allegation here of the use of tactics, strong-arm tactics, are there?

MR. HEINEMANN: Not in the indictment nor the probationary report. There is a specific fact --

THE COURT: That is in the latter part.

MR. ROONEY: I also contest that he refused to cooperate.

The value of the cooperation is something else, to say that he gave misleading information that led the agents on a wild-goose chase.

THE COURT: The statement is that he supplied information.

MR. ROONEY: I would like to have some facts to back up what we are talking about.

THE COURT: You call what he did cooperation?

That part is correct; whether you like the way it is recorded is another thing. He supplied information which they say is false and misleading.

MR. ROONEY: There is a reference to a strong-man, that this defendant acted as a

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2 strong-man who monitored the activities of
3 couriers.

4 We submit that is not true. There was
5 no need for a strong-man here for bringing in
6 small amounts of marijuana.

7 THE COURT: They were not small amounts.

8 MR. ROONEY: All I am talking about is
9 Dexter.

10 THE COURT: Is that all?

11 MR. ROONEY: That is all I have.

12 MR. HEINEMANN: With respect to the fact
13 that this defendant was involved with individ-
14 uals whose togetherness organization or
15 whatever word is appropriate, constituted
16 large, a large smuggling ring, and I think
17 the reading of the indictment would lend itself
18 to that, assuming we were able to prove each
19 and every count. I think if we add up the
20 quantities, it is something like 150 pounds.
21 Count one is 200 pounds, and count 3, 88 pounds,
22 and count 5, approximately 100, and count six,
23 300.

24 I don't know if we reach 1,000 pounds,
25 but we come close, if we don't. I don't think

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2 this is unfair. That is a vague term.

3 With respect to enforcer, two specific
4 examples come to my recollection, I am sure.

5 In the first instance, when Michael
6 Anderson returned with the quantity in count
7 five, he was able to get them through the
8 customs area, and the life of Michael Anderson
9 was threatened. It is in the affidavit.
0 They threatened his life, to bring it in.

1 Another occasion where Mr. Davis,
2 whether before or after his arrest, it was
3 related to us that the defendant, Ferguson,
4 visited Mr. Davis, and in words or substance
5 indicated to Davis he ought not tell tales
6 out of school, with respect to Ferguson's
7 involvement, or he would be sorry. I don't
8 know what exact words we use.

9 The other issue is the question of false
10 or misleading information. If the report char-
11 acterizes the failure of the defendant to co-
12 operate, Dexter Ferguson, is particularly a
13 striking example as follows:

14 It was Dexter Ferguson along with the
15 exporter shown to act as a courier on one trip,

1
2 and such would have been proven, had the
3 government gone to trial. Had we gone to trial,
4 there would be no question in anybody's mind
5 as to what 12 people would have believed. That
6 is obviated by the guilty plea. It is unfor-
7 tunate, but the facts do not come clearly to
8 light. In any event, Dexter Ferguson helped
9 to secure services as a courier in this case.
10 It is unknown in the form of any indictment
11 against the individuals exactly how that
12 quantity of marijuana got through the airport.
13 Dexter Ferguson has not told us. It is a fair
14 assumption that the defendant, Dexter Ferguson,
15 knows either the identity or responsible area
16 in which this person operated who brought that
17 quantity of marijuana through the airport and
18 the lack of the information or failure to
19 disclose the details, to what the agent properly
20 classified as truthful observations that led to
21 the conclusion of the report that there was
22 some misleading information, and I think
23 Ferguson didn't admit he went to the airport
24 to meet anyone. I don't think it is important
25 that we go into the details of the misleading

1
2 and false information. There has been no
3 indictment of perjury.

4 I think you should take into consider-
5 ation the argument that can be made that everyone
6 has finally been apprehended and caught in the
7 running, and this was the end of the road.

8 MR. ROONEY: There is nothing said to
9 substantiate any misleading information. That
10 word was used inadvertently. Nothing has mis-
11 led any agent.

12 The defendant, Ferguson, says he told
13 the agent about this incident that has been
14 alluded to. Maybe we should have some exposition
15 on that. There seems to be a dispute.

16 The fact of the matter is that
17 Mr. Heinemann says nothing to substantiate any
18 claim that Ferguson has this information.

19 THE COURT: I am willing to ignore that.

20 All it amounts to is just charges. I
21 said this and I said that. I don't care about
22 that. There is a lot more information in here
23 that I am guided by.

24 MR. ROONEY: Also the pre-sentence
25 report, there is no defendant's side of the story.

1
2 There is nothing.

3 THE COURT: Yes, there is.

4 Whatever he gave, he gave it.

5 On page 10, the defendant's statement
6 is here, and then on the following page, which
7 is part of the personal and disability data
8 which I assume was supplied by the defendant,
9 and then the summary sheet, which includes the
10 statements.

11 MR. ROONEY: There is nothing in here to
12 show he was confronted with these allegations.

13 THE COURT: How can he be confronted
14 with this. This is a gathering of information
15 and made into a form. He was at liberty to
16 make any statement he wished.

17 MR. ROONEY: I doubt from reading this
18 record, the pre-sentence report, that he was
19 told about the Anderson threats.

20 THE COURT: I am sure he wasn't. It is
21 not their duty to tell Mr. Ferguson everything.
22 They are not required to tell him everything
23 they are going to put in the report. This is a
24 confidential report. I am one of the first
25 judges in this court who has indicated to the

whole world that I don't care whether it is confidential or otherwise; I make it available.

You are dealing with one of the best probation departments.

MR. ROONEY: I have the highest respect for all probation departments.

He certainly played a part here. You don't like the word, organization, so we will call it a club, or anything you want.

Now, Mr. Dexter Ferguson, you are one of the defendants named in this indictment; right?

THE DEFENDANT: Yes.

THE COURT: And the gentleman standing to your right, Mr. Rooney, is your retained attorney?

THE DEFENDANT: Yes.

THE COURT: Do you want him to be your lawyer in this sentencing?

THE DEFENDANT: Yes.

THE COURT: Now, beyond what has been discussed on this probation report, is there any reason why sentences should not be pronounced against Dexter Ferguson?

1
2 MR. ROONEY: No.

3 THE COURT: Do you have any comments to
4 make on the conditions or the terms of the
5 sentence?

6 MR. ROONEY: Yes, your Honor.

7 I have some suggestions:

8 I would point out that the government
9 allowed this defendant to plead to two counts,
10 charging him basically with the unlawful dis-
11 tribution of 10 pounds of marijuana.

12 He is 44 years of age, and until this
13 problem arose, which arose, I submit, from the
14 adulation uncalled-for of Dexter Ferguson, by
15 Dexter Ferguson, of his brother, Arthur, and
16 he has never had any involvement. Indeed, his
17 record has been spotless. He gets a pension
18 from the police department in Washington, D.C.,
19 most of which goes to support his wife and four
20 children, who he is attempting, at least
21 recently there seems to be some hope of recon-
22 ciliation there.

23 He also seems to support his mother to
24 some extent. He is hopeful of getting a job in
25 real estate and has been working in the narcotics

1
2 facility.

3 Frankly, he is not an evil person. This
4 involvement is most unfortunate. The government
5 seems to think he knows much more than he does.
6 I think they are wrong. I only speak for him,
7 not the others. I don't know about the others.
8 I think his record should count for something,
9 your Honor. When someone toils in the vineyards,
10 respectfully, we all make mistakes, and this
11 is some time where he has to call upon his
12 record to show that he isn't a really bad
13 person, a person unfit for probation. I would
14 agree he needs probation. This man didn't
15 have an essential role here. His brother, if
16 anything, was the prime mover, and I don't think
17 the government contends he had a central role
18 here. As a matter of fact, from the beginning,
19 others predominated. I point out again, your
20 Honor, that he is standing here before you and
21 I know that you have to consider his background,
22 standing before you, having pleaded guilty to
23 the distribution of 10 pounds of marijuana,
24 a substance which the President's Commission has
25 told us 24 million Americans use. Only 20 pounds.

I would submit that he is a fit subject for probation.

THE COURT: Anything else?

MR. ROONEY: I have nothing else.

THE COURT: Mr. Ferguson, is there any reason why judgment should not now be pronounced against you?

THE DEFENDANT: No.

THE COURT: Do you have any comments to make?

THE DEFENDANT: I would like to make a statement, your Honor.

THE COURT: You certainly may.

THE DEFENDANT: I know my report in this whole affair that I was wrong in it, but I saw my brother out there drowning and I attempted to help him.

THE COURT: Supposing I interrupt. What do you mean, you saw him drowning? You wanted to help him? You mean, he was getting involved deeper and deeper and you wanted to help him?

THE DEFENDANT: Well, actually, his involvement was, he lent money out and to recoup his money, he found out what was happening and a

1
2 fellow was arrested. That was it.

3 THE COURT: In other words, he lent
4 money out?

5 THE DEFENDANT: Yes. That is how my
6 involvement came out, trying to get him out
7 of this situation.

8 THE COURT: In what way were you helping?

9 THE DEFENDANT: Well, when Mr. Davis
10 came back, I met him at the airport, and from
11 that sale, most of all that sale went to the
12 other man. We didn't realize any money out
13 of it. The probation department said it came
14 from my involvement, and I have nothing. I mean,
15 there was no monetary value made by us out
16 of it.

17 Your Honor, this allegation about my
18 threatening Mr. Davis, when I went on my job
19 they opened a center, right down from his house
20 on 111th Street, I went to his home to see if
21 he was working, and told him to apply for a
22 job. I never threatened that man. I have
23 spent 19 years on both sides of the fence, the
24 Police Department and the public defender's
25 office. I am not a violent man. My background

1
2 speaks for itself.

3 THE COURT: You have implicated yourself
4 in two counts. I was shocked by all this, because
5 people look up to policemen. You had all those
6 years on the police force, and you only left
7 it because you were hurt and you were out on
8 a disability pension, and then you go from
9 there to an investigative job, and from all
10 that experience and because you wanted to
11 extricate your brother, you get involved in
12 a matter like this. This is a peculiar way
13 to help your brother, by getting yourself
14 involved in a matter like this.

15 Do you want to say anything else?

16 THE DEFENDANT: No.

17 THE COURT: Mr. Heinemann, it is your
18 turn.

19 MR. HEINEMANN: I am going to reiterate
20 what I said when Arthur Ferguson was up for
21 sentencing:

22 This is a serious offense, and that one
23 of the functions of sentence should be the
24 deterrence of others to the commission of other
25 crimes. I have no recommendations. I leave to

1
2 your Honor the ultimate decision.

3 THE COURT: Anything from the probation
4 bureau?

5 THE PROBATION OFFICER: Nothing, your
6 Honor.

7 THE COURT: Mr. Dexter Ferguson, on your
8 plea of guilty to count eight of the indict-
9 ment contained in 73 CR 118, you, Dexter
10 Ferguson, are committed to the custody of the
11 Attorney General of the United States or his
12 duly authorized representative, who shall
13 designate the place of confinement for a term
14 of five years, plus a special period of parole
15 of five years, and on count ten, you are
16 committed to the custody of the Attorney General
17 of the United States or his duly authorized
18 representative, who shall designate the place
19 of confinement for a term of one year, plus
20 a special parole term of two years, to run
21 consecutively to the sentence imposed on
22 count eight.

23 MR. HEINEMANN: I move to dismiss the
24 remaining counts against Dexter Ferguson in
25 indictment 73 CR 118, and also 72 CR 304, the

1
2 superseding indictment.

3 THE COURT: PEmaining counts dismissed
4 as against this defendant, and 72 CR 304
5 dismissed.

6 MR. ROONEY: Would your Honor apply
7 Section 4203 of Title XVIII to this sentence?
8 It is my understanding, as a practical matter,
9 the defendant will not be released much earlier,
10 but it leaves it up to the parole board to
11 determine his release, in view of his background.

12 THE COURT: Have you anything to say
13 on this?

14 MR. HEINEMANN: I have no position on
15 this, your Honor.

16 THE COURT: The Court denies that request.
17
18 * * * * *
19
20
21
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24
25

A handwritten signature, possibly "M. J. White", is written across the bottom of the page. Two official court stamps are also present: one from the "CLERK OF THE COURT" and another from the "CLERK OF THE DISTRICT COURT".

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

MOTION
REDUCTION OF SENTENCE
73 CR 118

ARTHUR FERGUSON
DEXTER FERGUSON

Defendants

S I R S:

PLEASE TAKE NOTICE, that upon the annexed affirmation of BARRY KRINSKY, duly affirmed to the 11th day of October, 1973, and upon all the papers and proceedings heretofore and herein, the undersigned will move this Court before the Honorable ANTHONY TRAVIA, United States District Court Judge for the Eastern District of New York, 225 Cadman Plaza East, Borough of Brooklyn, City and State of New York, at a date and time to be set by the Court, for a reduction of the sentence imposed on June 15, 1973, pursuant to Rule 35 of the Federal Rules of Criminal Procedure, and for such other and further relief as to this Court may seem just and proper.

DATED: Brooklyn, New York
October 11, 1973

Yours, etc.

Barry Krinsky
Attorney for Defendants
66 Court Street
Brooklyn, New York

TO: ROBERT MORSE
UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK
BROOKLYN, NEW YORK

CLERK OF THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

A 67

UNITED STATES OF AMERICA

-against-

AFFIRMATION

ARTHUR FERGUSON
DEXTER FERGUSON

73 CR 118

Defendants

STATE OF NEW YORK) SS:
COUNTY OF KINGS)

BARRY KRINSKY an Attorney at Law hereby affirms, deposes and says:

That he is the Attorney for the defendants herein.

That this affirmation is submitted in support of a motion for a reduction of sentence, pursuant to Rule 35 of the Federal Rules of Criminal Procedure.

That the Defendant Arthur Ferguson was sentenced of June 15, 1973 to a term of imprisonment of 5 years plus special parole term of 5 years on count 1 and a term of imprisonment of 3 years plus special parole of 3 years on count 5 to run consecutively with the sentence imposed on count 1.

That the defendant Dexter Ferguson was sentenced on June 15, 1973 to a term of imprisonment of 5 years plus 5 years special parole term on count 8 and a term of imprisonment of 1 year plus special parole of 2 years on count 10 to run consecutively with the sentence imposed in count 8.

Both these sentences were imposed in connection with the defendants' plea of guilty to marijuana offenses.

The following reasons are submitted to the Court for its consideration and or reconsideration in connection with this motion for reduction of sentence.

That Arthur Ferguson is 48 years old and this conviction was upon information and belief, his first criminal offense.

That he had a relatively steady work record and that from 1970 to the time of his arrest he was the part-owner of Satellite Catering Company located on Utica and Empire Avenues in Brooklyn, New York.

That from the time he was a teenager he supported his mother and 3 younger brothers and sisters. He in fact assumed sort of a father's role since his father passed away when he was 12 years old.

That his mother, who has always been extremely dependent on him, has been suffering greatly as a result of his incarceration and her mental and physical condition has been rapidly deteriorating.

That he has always been a regular member of the Church located on Lefferts Place in Brooklyn, New York.

That Dexter Ferguson is 45 years old and this conviction was, upon information and belief, his first criminal offense.

That he worked for the Metropolitan Police Force in Washington, D.C. for 19 years, until a disability incurred during the performance of his duties as a police officer, forced him to retire early with full benefits.

After retiring from the Police Force he worked as a Public Defender for approximately 2 years.

Mr. Dexter Ferguson then came to New York sometime in 1970 and after his arrival in New York up to the time of his sentencing he worked at the Addiction Research Training Center at Fulton and Waverly Streets in New York as a security officer.

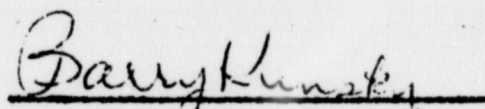
That these two defendants have the kind of background, work record and lack of prior criminal activity to commend themselves as fit subjects for rehabilitation.

That because of the consecutive sentences imposed on both defendants the possibility of either defendant being granted parole before he has completed at the very least, his full term on his first sentence, extremely remote. This is so, even if both defendants have amply demonstrated to the appropriate prison and parole authorities that they are sufficiently rehabilitated to justify their release on parole.

On the day that this motion is orally heard your deponent intends to offer further information to the Court which is relevant on this application.

Your deponent bases the foregoing information on an examination of the record, conversations with the defendants and conversations with other familiar with the facts and circumstances of this case.

It is respectfully urged of this Court, in light of the above and in light of any further arguments put forward orally on the day this motion is heard, that there be a reconsideration of the sentence imposed upon these defendants.


BARRY KRINSKY

PROBATION FORM 2
FEB 65UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

J-5754

PRESENTENCE REPORT

NAME DEXTER FERGUSON

Sentence
DATE June 15, 1973ADDRESS 1001 President St.
B'klyn, N.Y.

DOCKET NO. 73-CR-118

LEGAL RESIDENCE

OFFENSE Distribution of Mari-
juana (21 USC Sec. 841
(a)(1) (Penalty at 21
USC Sec. 841 (b)(1)(B))

AGE 44 DATE OF BIRTH 7/28/28

PENALTY Cts. 8 and 10 -Maximum
each count, 5 yrs. or
\$15,000 or both with a
Special Parole Term of
at least 2 yrs.

SEX M RACE

PLEA Guilty before Travia, J.
to Cts. 8 and 10 on
4/2/73

CITIZENSHIP U.S. Native

VERDICT

EDUCATION High School Graduate

MARITAL STATUS Separated

CUSTODY Released on \$25,000 bail
after 18 days in custody

DEPENDENTS 4

ASST. U.S. ATTY Mr. G. Heinemann

DC SEC. NO. 071-22-0265

DEFENSE COUNSEL Mr. P. Rooney

BI NO. 788-011- J5

RETAINERS OR CHARGES PENDING: Indictment 72-CR-304 which is related to the in-
stant offense is pending.

CODEFENDANTS (Disposition) A. Ferguson, M. Anderson, J.M. Parrish, W. Garnier,
E. Porter, S. Davis pleaded guilty & are the subjects of separate
reports. Bench warrants have been issued for W. Green, C. Green,
W. Josephs & C. Bailey. On 4/16/73 D. Hewitt & C. Morrison were
DISPOSITION sentenced to 5 yrs. plus two yrs. special parole.

DATE

SENTENCING JUDGE Travia, J.

ONLY COPY AVAILABLE

FILED

A 70

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT E.D. N.Y.

★ NOV 6 - 1974 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. DEXTER FERGUSON,

Petitioner,

-against-

UNITED STATES OF AMERICA,

Respondent.

TIME A.M.
P.M.

M'FILED
74-C-1055

DECISION AND ORDER

November 6, 1974

TRAVIA, D. J.

The petitioner was charged in indictment number 73-CR-118 with importing marijuana, conspiring to import marijuana, distributing marijuana and possessing marijuana with intent to distribute. On April 2, 1973, the petitioner pleaded guilty to counts eight and ten of indictment number 73-CR-118. Subsequent thereto, on June 15, 1973, the petitioner was sentenced to a term of five years in prison plus a special parole term of five years on count eight of indictment number 73-CR-118. Similarly, on count ten of indictment number 73-CR-118, the petitioner was sentenced to a term of one year in prison plus a special parole term of two years, to run consecutively to the sentence imposed on count eight.

The petitioner now moves to vacate and set aside

his judgment of conviction and sentence pursuant to Title 28 U.S.C. § 2255 on the ground that the court failed to apprise him at the time of his plea that he would be subject to a special parole term upon the expiration of any term of imprisonment imposed by the court.

Rule 11, Fed. R. Crim. P. provides in pertinent part:

"The court may refuse to accept a plea of guilty, and shall not accept such a plea . . . without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea." (Emphasis added).

The term "consequences" has been interpreted by the Court of Appeals for this Circuit to include the maximum possible sentence and the unavailability of parole. See Jones v. United States, 440 F.2d 466 (2d Cir. 1971); Bye v. United States, 435 F.2d 177 (2d Cir. 1970). However, the Second Circuit has not yet passed upon the question of whether the mandatory minimum special parole term is one of the "consequences" envisioned by Rule 11. But see United States v. Richardson, 483 F.2d 516 (8th Cir. 1973); Roberts v. United States, 491 F.2d 1236 (3d Cir. 1974). Nevertheless, even assuming arguendo that the mandatory minimum special parole term is a "consequence" within the meaning of Rule 11, the circumstances attendant to the petitioner's guilty plea require the denial

of the instant motion.

On April 2, 1973, the court also accepted the plea of the petitioner's brother, Arthur Ferguson. During the colloquy between the court and Arthur Ferguson, the court advised him that if he was sentenced to a term of imprisonment, the court would be obligated to impose a minimum special parole term of two years. See Plea Transcript of Arthur Ferguson at 22. Since the petitioner was in the courtroom at the time of his brother's plea, some fifteen minutes prior to the proffering of his own plea, it is highly likely that the petitioner heard the court's statement on special parole. In addition, it is important to note that the petitioner is an ex-policeman who was represented by competent counsel at the time of his plea. As a result, it is difficult to believe that the petitioner was not aware of the mandatory special parole term. Moreover, the court is of the opinion that while the petitioner's plea transcript does not indicate that the petitioner was advised of the mandatory special parole term, the court did so advise the petitioner and the court reporter may have failed to transcribe that portion of the Rule 11 inquiry.

Accordingly, it is

ORDERED that the petitioner's motion to set aside his judgment of conviction and sentence is denied.

The Clerk of the Court is directed to send a copy of
this Decision and Order to the petitioner.

A handwritten signature in cursive script, appearing to read "Charles P. Travis", is written over a horizontal line.

U. S. D. J.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK } ss

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

two copies

That on the 3rd day of February 1975 he served ~~copy~~ of the within

Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Mr. Dexter Ferguson

P. O. Box 100, L.F.C.

Lewisburg, Pa. 17837

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

Lydia Fernandez
LYDIA FERNANDEZ

Sworn to before me this

3rd day of February 1975

[Signature]
Notary Public
Qualified to administer oaths
Certificate filed in New York County
Commission Expires March 20, 1976